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Mining Conflict and the Politics of Obtaining a Social License: Insight from Guatemala

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Summary. — Mining as a development strategy has become ubiquitous throughout the developing world. However, if mining firms want to take advantage of the most mineral-rich terrain in developing countries, they must engage with the communities living near projected mining operations. Firms may sometimes use violence to quiet local opposition, but increasingly, they will seek a "social license to operate." This term refers not to the legal requirements firm must obtain, such as governmental and environmental clearances, but rather the elusive support of the affected local population that will help a firm avoid project delays, maintain a positive public image, and prevent further regulation of the mining industry. There is a lack of research on how firms pursue a social license to operate. Through a qualitative case study of a mining conflict in Guatemala, this article addresses two questions: First, how do mining firms obtain a social license to operate, in practice? Second, what results from this process? Using a mix of qualitative data collected in 2009–2011, the article analyzes how a large Guatemalan construction materials firm, Cementos Progreso, sought a social license to operate in the indigenous municipality of San Juan Sacatepéquez, Guatemala, and with what results. An alliance of firm and state constructed new institutions for citizen participation in local governance, promoted from within them the idea that mining was complementary with development, and backed up this discourse with tangible results. Government transparency and accountability improved, as did provision of basic services. The findings suggest that the local state, especially institutions designed to encourage citizen participation in local governance, can play a crucial role in determining whether and how mining firms can operate.

Key words — corporate social responsibility, citizen participation, decentralization, Latin America, Guatemala, social license

1. INTRODUCTION

Mining as a development strategy has become ubiquitous throughout the developing world, particularly in Latin America and Guatemala (Bebbington ed, 2012; Bebbington, Hinojosa, Humphreys Bebbington, Burneo, & Warnaars, 2008; Sawyer & Gomez, 2012; Solano, 2005; Thorpe, Battistelli, Guichaoua, Orihuela, & Paredes, 2012). Mining projects often generate intense, politically destabilizing social conflict, as affected people protest threats not only to their environment and ways of life, but also to their ability to control what they perceive as their own collective property (Bebbington, Humphreys Bebbington, Bury, Lingan, & Muñoz, 2008; Collins, 2009; Coumans, 2011; Da Silva, Costa, & Veiga, 2011; Dougherty, 2011a, 2011b; Fulmer, Snodgrass Godoy, & Neff, 2008; Holden & Jacobson, 2009; Hurley & Ari, 2011; Nolin & Stephens, 2010; Urkidi, 2011; Yagenova & García, 2009).

To pursue controversial mining projects, firms and states must deal with local resistance. On the one hand, they may use violence to quiet opposition; a second strategy is to win the consent of those who may be affected by mining operations, or seek what the extractive industry calls a "social license" to operate. In many developing world contexts, both strategies may be deployed simultaneously. This article critically examines the tenuous relationship between mining firms and communities, focusing on two key questions: First, how do mining firms obtain a social license to operate, in practice? Second, what results from this process? These questions are addressed through a qualitative case study of a mining conflict in an indigenous municipality in Guatemala.

Increasingly, both developing country governments and mining firms recognize the need to improve how mining projects impact local populations (Arrellano-Yanguas, 2011). By the late 1990s, managing "social risk" had arguably become firms' most significant challenge, something to strategize about and budget for (Joyce & Thomson, 2000; Prno, 2013). This challenge emerges from multiple factors, including increased global awareness of the negative impacts of mining and consequent consumer and shareholder pressure to improve practices; incorporation of social and environmental safeguards into World Bank/International Finance Corporation lending policies; and the surge of social activism in the wake of the Third Wave of democracy in the developing world, where citizens (and in Latin America especially, indigenous peoples) are staking a claim to rights over natural resources (Joyce & Thomson, 2000; Laplante & Spears, 2008, pp. 79–80). The last factor can be disastrous for firms and, indirectly, for the states that support them. Protests, roadblocks, and other acts of resistance may slow down or stop operations and harm a firm's reputation, impacting profitability (Coumans, 2011, p. 117; Laplante & Spears, 2008; Prno & Slocombe, 2012, p. 346). When local resistance spills into the media and human rights activist networks, shareholders and the general public in firms' home countries may demand greater regulation of the mining industry.

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The industry has responded by promoting "a positive association between mining and development" (Coumans, 2011, p. 117) at the global level and in the specific localities of firms' operations. This is done discursively and through actions, as firms now actively seek to obtain a "social license to operate" (SLO), a concept that has become ubiquitous in the mining industry since the late 1990s but has only begun to attract scholarly attention (Prno, 2013). The SLO differs from environmental and other legal permits because it is a de facto rather than de jure requirement for the successful operation of mining projects. It refers not to a firm's legality, but to its social legitimacy (Parsons, Lacey, & Moffat, 2014, p. 88). Though there is disagreement over specifics (e.g., see Owen & Kemp, 2013; Parsons *et al.*, 2014), most industry insiders and scholars broadly conceptualize "social license to operate" as a metaphor to describe when a firm has "the broad, ongoing approval and acceptance of society to conduct its activities" (Prno & Slocombe, 2012, p. 346; Joyce & Thomson, 2000; Thomson & Boutilier, 2011). "Society" here may encompass all relevant stakeholders in a project, but especially important are local communities, who tend to be a "key arbiter in the process" of securing a SLO "by virtue of their proximity to projects, sensitivity to effects, and ability to affect project outcomes" (Prno & Slocombe, 2012, p. 347). Obtaining a SLO is a primary goal for most mining firms today (Owen & Kemp, 2013).

There is a dearth of research on the process by which firms seek an SLO and the factors that lead communities to grant or refuse a SLO (Moffat & Zhang, 2014; Prno, 2013). Resource development firms use a variety of strategies to secure local acceptance, and these strategies may vary depending on industry—for instance, mining, hydroelectric, wind, or others (Hall, Lacey, Carr-Cornish, & Dowd, 2015). For most firms, the SLO is a way of operationalizing commitments to corporate social responsibility (Bice, 2014, p. 63), in that it requires attention to the social, environmental, and economic impacts of a project on its host communities. Ideally, mining firms will engage with local communities in a transparent participatory process to determine what these impacts are likely to be, and how the benefits of the mining project can be emphasized and the costs mitigated. Engagement may result in a mutual, written agreement; in most cases, however, active and participatory engagement must continue through the lifetime of the project (Luning, 2012; Parsons *et al.*, 2014; Prno & Slocombe, 2012, p. 349).

A multitude of factors might influence whether a firm successfully obtains a SLO for a given project, some that can be controlled (e.g., when and how firms engage with communities), and others that cannot (e.g., national socio-economic context) (Prno, 2013, p. 584; Prno & Slocombe, 2014). Most simply, to maintain a SLO, firms must build trust with local communities (Moffat & Zhang, 2014; Parsons *et al.*, 2014). This is of particular importance in developing countries where citizens cannot count on the state to effectively enforce environmental and tax regulations. A firm might increase its chances of gaining the communities' trust by establishing and maintaining communication with communities, ideally before mineral exploration begins; by respecting local customs; and by acting transparently (Prno, 2013, p. 585). Additionally, communities may be more likely to agree to mining when a firm's activities align with local understandings of sustainable development, and when a firm provides benefits to the local community such as tax payments, donations, business development opportunities, and employment (Prno, 2013, pp. 586–587).

Just as explanations for how firms can successfully obtain an SLO are tentative, criteria for determining when a SLO exists are "murky" as no scholarly consensus yet exists (Bice, 2014, p. 63). Broadly, a SLO is said to exist when local populations consent to a mining project, but since consent will never be unanimous, it is unclear how much consent there needs to be in order to affirm a SLO exists (Prno, 2013, p. 588). Further, consent may ebb and flow over the life of a project. Unlike a legal permit, which the state either issues or denies, a SLO is not a "binary concept" (Parsons *et al.*, 2014, p. 86) and can be gained, lost, and regained. It must "be continually renewed" through the ongoing engagement of the firm in the host communities (Parsons *et al.*, 2014, p. 86).

This article contributes to our understanding of how firms seek a SLO by showing with fine-grained detail the measures one firm took to elicit approval and acceptance—in a word, consent—from the local communities who would be affected by the firm's operations. It follows Prno (2013) by considering a SLO to exist when a majority of the local population appears to consent to the project. Recognizing that consent is never unanimous, the article examines the limitations to this consent.

Empirically, the article analyzes how a historically powerful Guatemalan firm, Cementos Progreso, sought a social license to operate in an indigenous municipality in Guatemala, through an approach heretofore undocumented in the literature on mining conflict: participatory democracy. In concert with local and national state officials, Cementos Progreso captured the construction and operation of new institutions for citizen participation, and donated the necessary funds to make participation produce results, thereby building support for mining, redirecting social protest into institutionalized channels, and marginalizing oppositional voices. The analysis reveals that the local state can play a crucial role in determining whether and how mineral extraction firms can operate. Specifically, it shows how state-sanctioned spaces for citizen participation in local government, a key facet of Guatemala's recent decentralization process, are fertile ground for promoting powerful ideas about what mining constitutes, and whether it can foster local development. Within those spaces, Cementos Progreso and state officials promoted a "depoliticized" vision of development—an idea of development as a collection of static, isolated technical problems that can be solved by experts and with sufficient financing—resources that a mining firm could provide. Despite these efforts, the firm achieved only limited success in obtaining a SLO.

This case study suggests that securing a SLO, while primarily a goal of mining firms, can also be a goal of the state (local and national), especially in developing countries where state actors may be closely networked with the owners of private capital. By highlighting the role of the *local* state, the article also departs from most research on mining conflict, which primarily focuses on multinational resource extraction firms, local opposition movements, and the national state (e.g., Bebbington ed, 2012; Bebbington, 2012; Da Silva *et al.*, 2011; Sawyer & Gomez, 2012). In most countries, including Guatemala, the local state lacks legal authority over sub-soil resources, potentially rendering it unimportant as a target of protest or subject of research in mining conflicts.[1] However, in Guatemala, it became a key actor in mining conflicts after a recent decentralization process shifted resources and authority from the national to municipal governments. Especially where the country's majority indigenous population lives, it has become a key site where debate over the role of natural resources and development takes place: since 2005, thousands of indigenous communities in over 78 municipalities have held referendums to protest natural resource extraction projects, often using local state institutions to do so (Costanza, 2015;